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CHAPTER II

NATIONALITY IN RELATION TO SUCCESSION OF STATES

Addendum

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SECTION 3

DISSOLUTION OF A STATE

Article 22 1/

Attribution of the nationality of the successor States

When a State dissolves and ceases to exist and the various parts of the territory of the predecessor State form two or more successor States, each successor State shall, subject to the provisions of article 23, attribute its nationality to:

(a) persons concerned having their habitual residence in its territory; and

(b) without prejudice to the provisions of article 7:

(i) persons concerned not covered by subparagraph (a) having an appropriate legal connection with a constituent unit of the predecessor State that has become part of that successor State;

(ii) persons concerned having their habitual residence in a third State, who were born in or, before leaving the predecessor State, had their last habitual residence in what has become the territory of that successor State or having any other appropriate connection with that successor State.

Article 23 2/

Granting of the right of option by the successor States

1. Successor States shall grant a right of option to persons concerned covered by the provisions of article 22 who are qualified to acquire the nationality of two or more successor States.

2. Each successor State shall grant a right to opt for its nationality to persons concerned who are not covered by the provisions of article 22.

1/ Article 22 corresponds to articles 19 and 20 proposed by the Special Rapporteur in his Third report, document A/CN.4/480/Add.1, p. 27.

2/ Article 23 corresponds to article 21 proposed by the Special Rapporteur in his Third report, ibid., p. 32.

Commentary

(1) Section 3 consists of two articles, article 22 and article 23, and applies to the case of a dissolution of States, as distinguished from the case of separation of part or parts of the territory, the latter being the object of section 4. Although it may not always be easy in practice to clearly differentiate between those two situations, such distinction is necessary. When a State disappears by dissolution, its nationality also disappears, while in the case of separation of part of the territory, the predecessor State continues to exist and so does its nationality. 3/

(2) The substantive rules embodied in articles 22 and 23 apply mutatis mutandis when the various parts of the predecessor State's territory do not become independent States following the dissolution, but are incorporated into other, pre-existing, States. In such case, the obligations spelled out in articles 22 and 23 would become incumbent upon those States.

(3) As the loss of the nationality of the predecessor State is an automatic consequence of dissolution, the issues to be addressed in section 3 are the attribution of the nationality of the successor States to persons concerned and the granting of the right of option to certain categories of persons concerned.

(4) The core body of nationals of each successor State is defined in paragraph (a) by reference to the criterion of habitual residence, which is consistent with the presumption in article 4. This criterion, widely accepted by publicists, 4/ was used on a large scale, in particular, to resolve the issue of attribution of nationality after the dissolution of the Austro-Hungarian Monarchy. 5/

3/ For comparable reasons, the Commission also distinguished between "dissolution" and "separation" when it dealt with the question of succession of States in respect of matters other than treaties. See Yearbook ... 1981, vol. II (Part Two), p. 45, document A/36/10, para. (3) of the commentary to draft articles 16 and 17.

4/ See Onuma, op. cit., note 5 referring to various commentators.

5/ The effects on nationality of the dismemberment of the Austro-Hungarian Monarchy, involving also the dissolution of the core of the dualist Monarchy, were regulated in a relatively uniform manner. Article 64 of the Peace Treaty of Saint-Germain-en-Laye provided that "Austria admits and declares to be Austrian nationals ipso facto and without the requirement of any formality all persons possessing at the date of the coming into force of the present Treaty rights of citizenship (pertinenza) within Austrian territory who are not nationals of any other State." (Laws concerning

(5) In the recent cases of the dissolutions of Yugoslavia and Czechoslovakia, some successor States used the criterion of the "citizenship" of the republics constituting the federation 6/ as the main criterion for determining their nationals, irrespective of their place of habitual residence. 7/ Consequently, some nationals of the predecessor State habitually resident in the territory of a particular successor State were not attributed the latter's nationality. The legislation of the successor States contained separate provisions on the acquisition of their nationality by such persons. 8/ In those instances where they were offered the possibility to

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nationality, op. cit., p. 586). Similar provisions are contained in article 56 of the Peace Treaty of Trianon concerning the acquisition of Hungarian nationality. (Ibid., p. 587.) Concerning the ambiguities of the concept of "pertinenza", see footnote 98 above.

6/ As pointed out by Rezek, "[i]l y a des federations où la nationalité fédérale coexiste avec une allégeance provinciale et l'Etat [fédéré] est parfois autorisé à légiférer sur cette matière. ... [L]a nationalité fédérale n'appara[it] que comme une conséquence de la nationalité de l'Etat [fédéré], établie suivant les règles dictées par les différentes législatures provinciales." (op. cit., pp. 342-343).

7/ See article 39 of the Citizenship Act of Slovenia of 5 June 1991 ("Nationalité, minorités et succession d'États dans les pays d'Europe centrale et orientale", documents 1, CEDIN, Paris X-Nanterre, Table ronde, décembre 1993); articles 35 and 37 of the Law on Croat Nationality of 26 June 1991 (ibid.); article 46 of the Yugoslav Citizenship Law (No. 33/96, see the materials submitted by Yugoslavia); article 1 of the Czech Law on Acquisition and Loss of Citizenship of 29 December 1992 (No. 40/1993, Col. of Laws, see the materials submitted by the Czech Republic); article 2 of the Law on Citizenship of the Slovak Republic of 19 January 1993 (No. 40/1993, see the materials submitted by Slovakia); article 26, paragraph 1, of the Citizenship Act of the Former Yugoslav Republic of Macedonia of 12 November 1992 (see Carol Batchelor, Philippe Leclerc, Bo Schack, Citizenship and Prevention of Statelessness Linked to the Disintegration of the Socialist Federal Republic of Yugoslavia (UNHCR, 3 April 1997), p. 21); and article 27 of the Citizenship Act of Bosnia and Herzegovina of 6 October 1992 (ibid., p. 27).

8/ Thus, article 40 of the Citizenship Act of Slovenia of 5 June 1991 provided that "[a] citizen of another republic [of the Yugoslav Federation] that had permanent residence in the Republic of Slovenia on the day of the Plebiscite on the independence and autonomy of the Republic of Slovenia on 23 December 1990 and is actually living there, can acquire citizenship of the Republic of Slovenia, on condition that such a person files an application with the administrative organ competent for internal affairs of the community where he resides ..." ("Nationalité, minorités et succession d'États dans les pays d'Europe centrale et orientale", documents 1, op.cit.); article 30, paragraph 2, of the Law on Croat Nationality of 26 June 1991 provided that any person belonging to the Croat people who did not hold Croat nationality on the day of the entry into force of the Law but who could prove that he had been legally resident in the Republic of Croatia for at least

acquire the nationality of their State of residence nearly all took advantage of such offer. 9/ Where such possibility was considerably limited, serious difficulties arose in practice. 10/

(6) Having examined State practice, including most recent developments, the Commission reaffirmed the importance of the criterion of habitual residence and decided to resort to "citizenship" of a constituent unit of a State only with respect to persons residing outside the territory of a particular successor State. In the same vein, article 8, paragraph (a), of the recently adopted Venice Declaration, confirmed the rule that "[i]n all cases of State succession, the successor State shall grant its nationality to all nationals of the predecessor State residing permanently on [its] territory." 11/

(7) Paragraph (b) sets out rules for the attribution of the nationality of a successor State to persons concerned having their habitual residence outside its territory. Subparagraph (i) deals with persons concerned who have their habitual residence either in a third State or in another successor State. The criterion used is "an appropriate legal connection with a constituent unit of the predecessor State" that has become part of a particular successor State. It goes without saying that this criterion can only be used where a bond of a legal nature between constituent units of the predecessor State and persons concerned existed under the internal law of that

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10 years, would be considered to be a Croat citizen if he supplied a written declaration in which he declared that he regarded himself as a Croat citizen (ibid.); and article 29 of the Citizenship Act of Bosnia and Herzegovina, as amended in April 1993, provided that all citizens of the former Socialist Federal Republic of Yugoslavia resident on the territory of Bosnia and Herzegovina as of 6 April 1992 became automatically nationals of Bosnia and Herzegovina (see Batchelor, Leclerc, Schack, op. cit., p. 27).

9/ For instance, the practice of the Czech Republic indicates that nearly all persons concerned habitually resident in its territory who did not acquire Czech nationality ex lege on the basis of the criterion of "citizenship" of the constituent unit of the Federation acquired such nationality via optional application. Thus, some 376,000 Slovak nationals acquired Czech nationality in the period from 1 January 1993 to 30 June 1994, mostly by option under article 18 of the Czech Law on Acquisition and Loss of Citizenship. The outcome was not substantially different from what would have resulted from the use of the criterion of habitual residence. See Report of the Experts of the Council of Europe on the Citizenship Laws, op. cit., para. 22 and note 7.

10/ Batchelor, Leclerc, Schack, op. cit., pp. 4 et seq.

11/ Council of Europe document CDL-NAT (96) 7 rev.

State. As discussed above, this was mostly the case of certain federal States. 12/

(8) Where subparagraph (i) is applicable, the majority of persons concerned having their habitual residence outside the territory of a particular successor State will fall under this category and subparagraph (ii) will come into play rather exceptionally, i.e. with respect to persons not already covered by subparagraph (i). Otherwise, the criteria in subparagraph (ii) are the main criteria for the attribution of nationality to persons concerned who, on the date of the succession of States, had their habitual residence outside the territory of the predecessor State. Thus, contrary to subparagraph (i), subparagraph (ii) only deals with persons concerned who have their habitual residence in a third State.

(9) The criteria referred to in subparagraph (ii) are those which were most often used in State practice, namely place of birth and place of the last habitual residence in the territory of the predecessor State. The Commission, however, did not want to exclude the use of other criteria, as indicated by the phrase "or having any other appropriate connection with that successor State." It emphasized, at the same time, that the use of any such criteria must be consistent with the general obligation of non-discrimination under article 14. Some members expressed reservations with regard to the terms "appropriate connection" which they considered too vague and proposed that they be replaced with the expression "effective link".

(10) Article 22 does not address the question of the mode of attribution by the successor State of its nationality. A successor State may

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12/ See footnote 6 above.

fulfil its obligation under this provision either by means of automatic attribution of its nationality to persons concerned or by providing for the right of these persons to acquire such nationality upon option.

(11) The application of the criteria in article 22 may result in a person concerned being qualified to acquire the nationality of more than one successor State. In such case, the attribution of nationality will depend on the option of such person, as indicated by the phrase "subject to the provisions of article 23". Moreover, paragraph (b) is subject to the provision in article 7 whereby a State is prohibited from attributing its nationality to persons concerned having their habitual residence outside its territory against their will. Accordingly, the obligation of a State under paragraph (b) is to be implemented either through an "opting-in" procedure or by ex lege attribution of its nationality with an option to decline ("opting-out" procedure).

(12) Paragraph 1 of article 23 provides for the right of option of persons concerned who are qualified to acquire the nationality of two, or, in certain cases, even more than two, successor States. Such "double qualification" may occur, for instance, when a person concerned habitually resident in one successor State had, prior to the dissolution, the "citizenship" of a constituent unit of the predecessor State which became part of another successor State. There are several recent examples of State practice in which a right of option was granted in such circumstances. 13/ This may also occur when a person concerned habitually resident in a third State was born in the territory which became part of one successor State but

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13/ Article 3, paragraph 1, of the Law on Citizenship of the Slovak Republic provided that every individual who was on 31 December 1992 a citizen of the Czech and Slovak Federal Republic and did not acquire the citizenship of Slovakia ipso facto, had the right to opt for the citizenship of Slovakia. It was mainly addressed to those persons who, by virtue of the Czech Law, became ex lege Czech nationals but were habitual residents of Slovakia. (See the materials submitted by Slovakia.) Similarly, article 18 of the Czech Law on Acquisition and Loss of Citizenship set out the conditions for the optional acquisition of Czech nationality by persons habitually resident in the Czech Republic who acquired ex lege the Slovak nationality. (See the materials submitted by the Czech Republic). Another example is the Yugoslav Citizenship Law (No. 33/96). In addition to basic provisions concerning the ex lege acquisition of nationality, article 47 stipulated that "Yugoslav citizenship may be acquired by any citizen of the Socialist Federal Republic of Yugoslavia who was a citizen of another ... republic [of the Federation] ... whose residence was in the territory of Yugoslavia on the date of the proclamation of the Constitution." (See the materials submitted by Yugoslavia).

also has an appropriate connection, such as family ties, with another successor State.

(13) Paragraph 2 deals with persons concerned who have their habitual residence in a third State and who are not covered by the provisions of article 22, paragraph (b), such as those who acquired the nationality of the predecessor State by filiation or naturalization and were never residents thereof. Unless they have the nationality of a third State, these persons would become stateless. The purpose of the option envisaged under paragraph 2, however, is not limited to the avoidance of statelessness, but is to enable such persons to acquire the nationality of at least one successor State, thus giving effect to the right to a nationality as embodied in article 1.

SECTION 4

SEPARATION OF PART OR PARTS OF THE TERRITORY

Article 24 1/

Attribution of the nationality of the successor State

When part or parts of the territory of a State separate from that State and form one or more successor States while the predecessor State continues to exist, a successor State shall, subject to the provisions of article 26, attribute its nationality to:

(a) persons concerned having their habitual residence in its territory; and

(b) without prejudice to the provisions of article 7:

(i) persons concerned not covered by subparagraph (a) having an appropriate legal connection with a constituent unit of the predecessor State that has become part of that successor State;

(ii) persons concerned having their habitual residence in a third State, who were born in or, before leaving the predecessor State, had their last habitual residence in what has become the territory of that successor State or having any other appropriate connection with that successor State.

Article 25 2/

Withdrawal of the nationality of the predecessor State

1. Subject to the provisions of article 26, the predecessor State shall withdraw its nationality from persons concerned qualified to acquire the nationality of the successor State in accordance with article 24. It shall not, however, withdraw its nationality before such persons acquire the nationality of the successor State.

2. Subject to the provisions of article 26, the predecessor State shall not, however, withdraw its nationality from persons referred to in paragraph 1 who

(a) have their habitual residence in its territory;

1/ Article 24 corresponds to articles 22 and 23 proposed by the Special Rapporteur in his Third report, document A/CN.4/480/Add.1, p. 36.

2/ Article 25 corresponds to article 24 proposed by the Special Rapporteur in his Third report, ibid., p. 44.

(b) are not covered by subparagraph (a) and have an appropriate legal connection with a constituent unit of the predecessor State that has remained part of the predecessor State;

(c) have their habitual residence in a third State, and were born in or, before leaving the predecessor State, had their last habitual residence in what has remained part of the territory of the predecessor State or have any other appropriate connection with that State.

Article 26 3/

Granting of the right of option by the predecessor and the successor States

Predecessor and successor States shall grant a right of option to all persons concerned covered by the provisions of articles 24 and 25 who are qualified to have the nationality of both the predecessor and successor States or of two or more successor States.

Commentary

(1) Section 4 consists of three articles, i.e. articles 24, 25 and 26, and applies to the case of separation of part or parts of the territory. The distinction between this situation and the case of the dissolution of a State has been explained in the commentary to section 3 above. As stressed by the Commission in its commentaries to draft articles 14 and 17 on succession of States in respect of matters other than treaties, 4/ the case of separation of part or parts of the territory of a State must also be distinguished from the case of the emergence of newly independent States, the territory of which, prior to the date of the succession, had a "status separate and distinct from the territory of the State administering it". 5/

(2) The substantive rules in articles 24 to 26, however, may be applied mutatis mutandis in any possible future case of emergence of a newly independent State.

3/ Article 26 corresponds to article 25 proposed by the Special Rapporteur in his Third report, ibid., p. 50.

4/ Yearbook ... 1981, vol. II (Part Two), pp. 37 and 45, document A/36/10, para. (2) of the commentary to draft article 14 and para. (5) of the commentary to draft article 17.

5/ See the Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations, General Assembly resolution 2625 (XXV) of 24 October 1970, annex.

(3) Given the fact that it is sometimes difficult in practice to distinguish between dissolution and separation, the Commission considered it important that the rules applicable in those two situations be equivalent. Accordingly, article 24 on the attribution of the nationality of the successor State is drafted along the lines of article 22.

(4) Paragraph (a) of article 24 sets out the basic rule that the successor State shall attribute its nationality to persons concerned habitually resident in its territory. It must be recalled that an analogous provision regarding the case of separation was included in paragraph (b) of article 18 of the 1929 Harvard Draft Convention on Nationality. 6/

(5) This rule was applied in practice after the First World War in the case of the establishment of the Free City of Danzig 7/and the dismemberment of the Austro-Hungarian Monarchy. 8/ More recently, it was applied in the case of the separation of Bangladesh from Pakistan in 1971, 9/and also when

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6/ This provision stipulated that, "[w]hen a part of the territory of a State ... becomes the territory of a new State, the nationals of the first State who continue their habitual residence in such territory lose the nationality of that State and become nationals of the successor State, in the absence of treaty provisions to the contrary, unless in accordance with the law of the successor State they decline the nationality thereof". (American Journal of International Law, vol. 23 (Special Suppl.) (1929), p. 15).

7/ See article 105 of the Peace Treaty of Versailles, Materials on succession of States, op. cit., p. 489.

8/ See article 70 of the Peace Treaty of Saint-Germain-en-Laye, ibid., p. 496. The rule applied equally to States born from separation and those born from dissolution. It was also embodied in respective article 3 of the Treaty of Versailles with Poland, the Treaty of Saint-Germain-en-Laye with Czechoslovakia, the Treaty of Saint-Germain-en-Laye with the Serb-Croat-Slovene State and the Treaty of Paris with Romania. (G.F. de Martens, Nouveau recueil général de traités, third series, vol. XIII, pp. 505, 514, 524 and 531 respectively.)

9/ Residence in its territory was considered to be the primary criterion for the attribution of the nationality of Bangladesh, regardless of any other considerations. However, non-Bengalese inhabitants of the territory were required to make a simple declaration in order to be recognized as nationals of Bangladesn; they could also opt for the retention of Pakistani nationality. (See M. Rafiqul Islam, "The Nationality Law and Practice of Bangladesh", in Ko Swan Sik (ed.), Nationality and International Law in Asian Perspective (Dordrecht, Martinus Nijhoff, 1990), pp. 5-8.)

Ukraine 10/and Belarus 11/became independent following the disintegration of the Soviet Union. It may also be noted that the criterion of habitual residence was used in practice by some newly independent States. 12/

(6) A different criterion was used in the case of the separation of Singapore from the Federation of Malaysia in 1965, namely that of the "citizenship" of Singapore as a component unit of the Federation, which existed in parallel to the nationality of the Federation. 13/ Yet another criterion, the place of birth, was applied in the case of the separation of Eritrea from Ethiopia in 1993, 14/probably inspired by the earlier practice of a number of newly independent States. 15/

(7) As it did in article 22 with respect to the case of dissolution, the Commission decided to resort to the criterion of habitual residence for the determination of the core body of the population of a successor State. In so doing, it took into consideration both the prevailing practice as well as the drawbacks of the use of other criteria to this end, such as rendering a considerable population alien in its homeland. 16/

10/ Article 2 of the Law on Citizenship of Ukraine No. 1635 XII of 8 October 1991 (see the materials submitted by Ukraine).

11/ Article 2 of the Law on Citizenship of the Republic of Belarus of 18 October 1991, as amended by the Law of 15 June 1993 and the Proclamation of the Supreme Soviet of the Republic of Belarus of 15 June 1993 (see the materials submitted by Belarus).

12/ See Onuma, op. cit., p. 15.

13/ Goh Phai Cheng, op. cit., p. 9. Comparable criteria were also used by some newly independent States in order to define the core body of their nationals during the process of decolonization. See de Burlet (1975), op. cit., p. 120, who makes reference to "nationalités spéciales" ... créées en vue d'une indépendance future [qui] n'étaient destinées à s'épanouir pleinement qu'avec cette indépendance". See also pp. 124 and 129. See further the example of the Philippines cited in Onuma, op, cit., note 96.

14/ See Eritrean Nationality Proclamation No. 21/1992 of 6 April 1992 (Text in Eritrea - Referendum of Independence, April 23-25, 1993 (African-American Institute), pp. 80-84).

15/ For examples of such practice, see Onuma, op. cit., pp. 13-14, and the Third report on nationality in relation to the succession of States, document A/CN.4/480/Add.1, paras. (15) to (18) of the commentary to draft article 23 proposed by the Special Rapporteur.

16/ See Onuma, op. cit., p. 29.

(8) As regards paragraph (b), it was included in article 24 for reasons similar to those leading to the inclusion of paragraph (b) in article 22. 17/ The commentary to the latter provision is therefore also relevant to paragraph (b) of article 24.

(9) Paragraph 1 of article 25 deals with the withdrawal of the nationality of the predecessor State as a corollary to the acquisition of the nationality of the successor State. This provision is based on State practice which, despite some inconsistencies, indicates that such withdrawal has been to a large extent an automatic consequence of the acquisition by persons concerned of the nationality of a successor State. 18/ The withdrawal of the nationality of the predecessor State is subject to two conditions. First, that persons qualified to acquire the nationality of the successor State did not opt for the retention of the nationality of the predecessor State under the terms of article 26. This is the meaning of the opening phrase "Subject to the provisions of article 26". Second, that such withdrawal shall not occur prior to the effective acquisition of the successor State's nationality. The purpose of this condition is to avoid statelessness, even if only temporary, which could result from a premature withdrawal of nationality. 19/

17/ See paras. (7) to (9) of the commentary to section 3 above. For the practice relating to the use of the criterion referred to in subparagraph (b) (i) of article 24, see footnote 13 above. For the use of the criterion of the place of birth listed in subparagraph (ii), see Third report on nationality in relation to the succession of States, document A/CN.4/480/Add.1, paras. (5) and (6) of the commentary to draft article 23 proposed by the Special Rapporteur. See also article 2, paragraph (2), of the Law on Citizenship of Ukraine, stipulating that the citizens of Ukraine include "persons who are ... permanent residents in another country provided they were born in Ukraine or have proved that before leaving for abroad, they had permanently resided in Ukraine, who are not citizens of other States and not later than five years after enactment of this Law express their desire to become citizens of Ukraine" (see the materials submitted by Ukraine).

18/ For examples from State practice, see Third report on nationality in relation to the succession of States, document A/CN.4/480/Add.1, paras. (1) to (8) of the commentary to draft article 24 proposed by the Special Rapporteur. As regards the doctrine, see footnote 6 above.

19/ See also article 12 of the Venice Declaration which prohibits the predecessor State from withdrawing its nationality from its own nationals who have been unable to acquire the nationality of a successor State. Council of Europe document, CDL-NAT (96) 7 rev.

(10) Paragraph 2 of article 25 lists the categories of persons concerned who are qualified to acquire the nationality of the successor State but from whom the predecessor State shall not withdraw its nationality, unless they opt for the nationality of the successor State - a condition which is reflected in the opening phrase "Subject to the provisions of article 26". The criteria used for the determination of these categories of persons are the same as those in article 24.

(11) Some members believed that this paragraph was superfluous, while others considered it necessary for the purpose of defining the categories of persons to whom a right of option between the nationality of the predecessor and the successor States should be granted.

(12) Article 26 deals with the right of option. There are numerous cases in State practice where a right of option was granted in case of separation of part or parts of the territory. 20/

(13) Article 26 covers both the option between the nationalities of the predecessor State and a successor State as well as the option between the nationalities of two or more successor States. Contrary to what is provided in article 20 with respect to a transfer of territory, in the case of separation of part or parts of the territory, the right of option for the retention of the nationality of the predecessor State is not envisaged for all persons concerned qualified to acquire the nationality of the successor State. This right is limited to those persons who, at the same time, fulfil one of the criteria in article 24 and one of those in article 25, paragraph 2. This would be, for instance, the case of a person concerned habitually resident in a third State who was born in the territory of what became a successor State but before leaving for abroad had his or her last habitual residence in the territory that has remained part of the predecessor State.

(14) Similarly, the right of option between the nationalities of two or more successor States has to be granted only to persons concerned who, by virtue of the criteria in article 24, are qualified to acquire the nationality of more than one successor State. Leaving aside the case where the criterion

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20/ See Third report on nationality in relation to the succession of States, document A/CN.4/480/Add.1, paras. (1) to (5) of the commentary to draft article 25 proposed by the Special Rapporteur.

referred to in subparagraph (b) (i) would be applicable, the right of option is only envisaged for some persons concerned habitually resident in a third State.

(15) Some members were of the view that the provisions of section 1 concerning a transfer of territory and section 4 on separation should be drafted along the same lines, as they saw no reason to apply different rules in these two situations.

Article 27

Cases of succession of States covered by the present draft articles

Without prejudice to the right to a nationality of persons concerned, the present draft articles apply to the effects of a succession of States occurring in conformity with international law and, in particular, with the principles of international law embodied in the Charter of the United Nations.

Commentary

(1) As it already stated in the commentary to article 6 of the draft articles on succession of States in respect of treaties, "[t]he Commission in preparing draft articles for the codification of the rules of international law relating to normal situations naturally assumes that those articles are to apply to facts occurring and situations established in conformity with international law. Accordingly, it does not as a rule state that their application is so limited. Only when matters not in conformity with international law call for specific treatment or mention does it deal with facts or situations not in conformity with international law". 1/ Nevertheless, the two Vienna Conventions on the Succession of States contain a provision limiting explicitly their scope of application to successions of States occurring in conformity with international law. 2/

(2) For purposes of consistency with the approach adopted in the above two Conventions, the Commission decided to include in the present draft articles the provision in article 27 which is based on the relevant provisions of these instruments, although it is evident that the present draft articles address the question of the nationality of natural persons in relation to a succession of States which took place in conformity with international law.

1/ Yearbook ... 1974, vol. II (Part One), p. 181, document A/9610/Rev.1, para. (1) of the commentary to draft article 6.

2/ See article 6 of the Vienna Convention on Succession of States in respect of Treaties and article 3 of the Vienna Convention on Succession of States in respect of State Property, Archives and Debts.

The Commission did not consider questions relating to the present topic which could arise in situations such as military occupation 3/ or illegal annexation of territory.

(3) The present draft articles embody certain rights of individuals whose scope of application is broader than the present topic. The Commission therefore felt it desirable to reflect this fact in the opening phrase of article 27. Some members, however, expressed reservations with respect to this phrase, as they believed that it rendered the entire provision ambiguous.

(4) As this provision was included in the draft articles at a late stage of the Commission's work on the topic, the Commission left the decision on its final placement for the second reading.

3/ It is worth noting that article 40 of the Vienna Convention on the Succession of States in respect of Treaties stipulates that "[t]he provisions of the present Convention shall not prejudge any questions that may arise in regard to a treaty from the military occupation of a territory".